

REMARKS

This amendment is filed in response to the Office Actions of November 17, 2006 and April 24, 2007 and to the Examiner's Advisory of May 11, 2007, and replaces our unentered Response filed April 12, 2007. By Separate documents a Notice of Appeal is filed and a Request for Extension of Time.

Said Advisory of May 11, 2007 refers to a telephone conference of May 9, 2007 between the Examiner and the undersigned counsel wherein prospective claim amendments were discussed. Subsequently, two new claims were proposed by the Examiner and this was discussed and provisionally approved in another telephone interview of May 15, 2007. The courtesy of the Examiner in granting the telephone interviews is acknowledged and greatly appreciated.

The current status of claims in this case is:

- (a) pending claims 7, 8, 32, 34 and 42-49,
- (b) canceled claims 1-6, 9, 14-18, 25, 27-31, 33, 38, 39, and 41 (without prejudice), and
- (c) withdrawn claims 10-13, 19-24, 26, 35-37 and 40.

As discussed, new claim 46 and 47 are independent, defining two embodiments and claims 7, 8, 32, 34, 42-45, 48 and 49 are dependent on claim 46 or 47.

The two claims discussed with the Examiner are now presented as new claims 46 and 47 in the above Listing of Claims. The remaining pending claims are amended as appropriate to depend on one or the other of new claims 46 and 47.

In view of the above-mentioned telephone conferences, it is applicants' belief that new claims 46 and 47 are patentably distinguishable over the cited prior

art, and final approval by the Examiner is respectfully requested.

In the drafting of new claims 46 and 47 efforts were made to provide both structure and function different and patentably distinguished particularly over the cited prior art reference to Hukuba, and over other cited art. In Hukuba the toothbrush head has different positions, but all are within the operating mode. In the claims 46 and 47 the head part has a single and only normal use position, and all other positions are either:

- (a) pivoted rearward from the "use" position and are inoperative, or
- (b) are unrestrained, floppy and inoperative in contrast to the restrained "use" position.

Issues raised in the Advisory of May 11, 2007 have been addressed above; issues raised in the Office Actions of April 24, 2007 and November 17, 2007 will be addressed below.

The first issue in the April 24, 2007 action pertains to withdrawn claim 40, the text of which is now included in the Listing of Claims above. This is believed to overcome the compliance issue.

The second issue pertains to paragraph no. 3 on page 2 of the April 24 action stating that the current amendments present additional claims without canceling a corresponding number of finally rejected claims. In the present amendment we have cancelled claims 25, 31, 33, 38, 39 and 41 and substituted only independent claims 46 and 47 and dependent claims 42-49.

The third issue pertains to the assertion that the proposed amendments (in the April 12, 2007 paper) raise new issues that would require further consideration and/or searches. This is respectfully traversed for the following reasons.

Since claim 25 is canceled the rejection is moot; however, the proposed amendment in our earlier response clarified the inventive concept herein, that "moveable between two angular orientations" is redefined as "movable between said single operative first orientation and said second orientation different from said first orientation". In discussion herein orientation, position and angulation of the head part had been used as equivalent and interchangeable in specification. The concept of "predetermined first orientation" (orientations, position and angulation are used generally interchangeable).

In the present invention it is clear: (a) that in the new toothbrush the head part has an initial or first position or orientation relative to the handle; and (b) that such first position is a specific and only operative position. Thus, this first position is not a choice of different positions, and is not a variable position. Furthermore, the first position is established only when the head part is latched to a specific first location.

The second position of the head part is some position different from the first position, and may be 10 degrees or 20 degrees or some other orientation or angular variation different from said first orientation. In the second position the head part may also be freely pivotable or floppy, so long as it is pivoted away from the first position.

The concept of the toothbrush being inoperative or of the head part being in an inoperative position appears throughout the specification and the original claims, examples being on: page 3, lines 1, 4, 26; page 4, line, 3; and page 6, line 9, or becomes "unusable" because it is floppy as seen on page 4, line 2, and page 7, last line ("free to flop backward")

Thus, the terms and concepts of

- (a) first or predetermined position or orientation,
- (b) second position different from the first, and

- (c) unusable or inoperative (floppy) are all originally disclosed and claimed and are not new matters, new issues or new claim features.

Claim 31, now canceled, merely clarified that "said first orientation" is redefined as "said single operative first position" and said released head part...will move to a second position which is different from said first position".

Claim 32 amendments are similar to those of claim 31.

Claim 38, now canceled, amendments are similar to those of claim 31, plus a change of "non-operative" to "inoperative"

In Claims 42-44 the term "motorless" has been removed.

It is respectfully submitted that none of the above-mentioned amendments involves new or different subject matter from that of the originally filed claims, and none creates new disclosure or new issues, and none necessitates a new or further search of prior art. More particularly, each of these amendments has an antecedent basis in the original specification and in the original claims described above.

The fourth issue asserts in the above-noted actions that the present amendments do not place the pending claims in condition for allowance. This is addressed in the further remarks below.

Claims 7, 8, 32, 34 and 42-49 remain pending; claims 10-13, 19-24, 26, 35-37 and 40 are withdrawn; and claims 1-6, 9, 14-18, 25, 27-31, 33, 38, 39 and 41 are canceled without prejudice. The rejection of the previously pending claims is noted and respectfully traversed.

The rejection of claims 7, 8, 32, 34 and 41-45 under 35 U.S.C. 112, first paragraph, is noted and believed to be now overcome by the elimination of the term "motorless" in all of the rejected claims where it appears.

The rejection of claims 7, 8, 32, 34 and 42-44 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hukuba, is noted and believed overcome as regards these claims and newly added claims 45, 46 and 47-49, as discussed below.

The rejection asserts on page 4, lines 6-7 of the action, that "when the ball (66) is between adjacent concave portions (68), the head would "freely flop". It is respectfully submitted that the terminology "freely flop" does not apply here. First, there would be some frictional resistance of the ball against the wall surface intermediate the concave portions 68, so that the head could not "flop freely". Second, and more importantly, the receptacle or housing surrounding the shank of head portion 10 functions as a barrier to prevent angular motion greater than that shown in Fig. 11, for example, of angular positions a_1, a_2, a_3 . Fig. 13 further illustrates the limitation on head part 10, whereby its lower end is barred from further angulation, and the top edge of receptacle 56 also sets limits for pivoting of the head part. Head part 10 does pivot between but not beyond predetermined limits or predetermined angular orientations.

A key structural feature and function of the present toothbrush invention concerns the movement of the head part from its specific single or sole normal operative position to either (A) a specific position different from said specific normal operative position, or (B) an area comprising a range of positions different from said specific normal operative position.

Condition A above is illustrated in Figs. 11, 11A and 11B with descriptions on pages 6-7 of the specification. Here is a toothbrush having a specific

sole normal operative position when spring detent 65B is in recess 67A, and an inoperable position when spring detent 65B is in recess 67B. Pivotal movement occurs automatically when head 65 receives excessive force from bristles urged against teeth or gums.

It should also be noted on page 6, last line, that the "head will be free to 'flop' backward," namely, the head (when dislodged from detent-in-recess 67A), will flop freely between positions of recesses 67A and 67B, or alternatively the detent may lodge in recess 67B and in such orientation be inoperable but not flopping. This is an example of condition (B) above where there are a range of inoperative positions different from the one normal operative position.

The Hukuba toothbrush device has a range of operative positions as the head oscillates and has no inoperative position. The present claims define the present invention with respect to the features that distinguish it from Hukuba. It is respectfully submitted that a person skilled in this art could not reasonably start with Hukuba's device, and limit it to a single operative position since it constantly oscillates between positions, and also could not establish a non-operative position since it must be operative in all positions.

As discussed in applicant's prior response, the Hukuba device reduces the head oscillation when the angulation increases, and allows maximum speed of oscillation when the angulation is least. A principal reason for this variation is to control the toothbrush from greater speed during greater oscillation which might create excessive force that could damage teeth, gums or mouth.

The present invention, first is not an electrical, reciprocating toothbrush, so that arguably Hukuba is not even reasonably relevant prior art. However, both devices concern safety from excessive force, and the present invention solves this issue in a manner totally and absolutely different from Hukuba. In the present claims we have a defined orientation where the toothbrush is operable and a second

orientation where it is not operable. Excessive pressure on the teeth and bristles leads the head to automatically pivot to the second angulation different from the acceptable orientation, and thus to be positioned in an orientation where it is inoperative as a normal functional toothbrush.

The Hukuba toothbrush discloses a structure: (a) that is nothing like that of the present claims, and (b) that is totally non-obvious from Hukuba. Hukuba discloses head movement while in its operative modes, and no head orientation beyond the designed limits.

When there is excessive force the new toothbrush allows (per its automatic pressure release) head movement to a position different from its normal and operative position. In such moved (released) position the toothbrush becomes inoperative. Hukuba's device never becomes inoperative. It merely runs faster or slower. In fact, with greater pressure, its oscillation is diminished, but it does not stop, and accordingly, damage to teeth and gums from excessive pressure can still occur. The new invention totally prevents such damage from excessive pressure.

From this observation it is urged that Hukuba is not an appropriate reference for use in a rejection on obviousness. It is respectfully submitted that from Hukuba, it is neither obvious nor reasonable to design a toothbrush whose head part moves beyond an acceptable range of angulations and in fact ceases to be operable. Also, the Hukuba device has no condition where excessive pressure is impossible, as is the case with the present invention.

The independent claims 46 and 47 have all been drafted to clarify and limit the invention claimed to a structure patentably distinguishable over Hukuba and particularly to omit the term "motorless". Furthermore, these claims recite that the head part has a first position for use in a normal state, and that upon application of excessive force the catch means will release the head to pivot rearwardly to an angular position different from said first position. This further distinguishes the new

toothbrush from that of Hukuba where the brush has a multitude of possible positions depending on motor rotation and brush angulation, all of which are variable. The Hukuba toothbrush is "operable" in all positions of the brush, whereas the new toothbrush is inoperative in all but the first use position.

Claims 7 and 8, dependent on claim 31, adds the limitation of a predetermined threshold level of force to cause the head to move out of the predetermined acceptable orientation.

In view of the amendments herein and the discussions and distinctions presented, it is believed that all objections and rejections have been overcome. Accordingly, reconsideration and favorable action is respectfully requested.

If any additional fees are due please charge same to our Deposit Account No. 01-0035 and if any additional extension of time is required, please consider this a petition for same.

Respectfully Submitted,

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